

Service Date: October 24, 1990

DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA

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IN THE MATTER OF The Application	)	UTILITY DIVISION
by the MONTANA POWER COMPANY for	)	
Authority to Increase Rates for	)	DOCKET NO. 90.6.39
Natural Gas and Electric Service.	)	ORDER NO. 5484f

PROTECTIVE ORDER

On September 26, 1990 the Montana Public Service Commission (Commission) received a Motion for Protective Order from the Montana Power Company (Company) seeking to limit access and use of certain Western Energy Company materials and information, as well as certain information requested by the Public Service Commission staff during its 1990 in-house audit. On September 28, 1990 the Company submitted an amendment to its Motion for Protective Order. The Motion and amendment were served on all parties to this Docket and the Commission gave opportunity to comment on the Motion through October 11, 1990. No comments were received and the Motion is Granted.

Now Therefore It Is Ordered that the following Protective Order, covering the material and information described by the Company in its Motion, as amended, shall be in effect throughout the proceedings in Docket No. 90.6.39 and thereafter, unless and until

the Company has announced that the information need not remain under the cover of this Order.

(a) Confidential Information. All documents, data, information, studies and other materials furnished pursuant to any interrogatories or requests for information, subpoenas, depositions, or other modes of discovery, or pursuant to Commission order, that are claimed to be of a trade secret, privileged or confidential nature shall be furnished pursuant to the terms of this Order, and shall be treated by all persons accorded access thereto pursuant to this Order as constituting trade secret, confidential or privileged commercial and financial information (hereinafter referred to as "Confidential Information"), and shall neither be used nor disclosed except for the purpose of this proceeding, and solely in accordance with this Order. All material claimed to be Confidential Information shall be so marked by the Company by stamping the same with a designation indicating its trade secret, proprietary or confidential nature. In addition, all material claimed to be Proprietary Information must be submitted to the Commission on yellow paper so that it can be easily identified for filing purposes.

(b) Use of Confidential Information and Persons Entitled to Review. All Confidential Information made available pursuant to this Order shall be given solely to counsel for the parties, and shall not be used or disclosed except for purposes of this proceeding; provided, however, that access to any specific Confidential Information may be authorized by said counsel, solely for the purpose of this proceeding, to those

persons indicated by the parties as being their experts in this matter.

Any such expert may not be an officer, director or employee (except legal counsel) of the parties, or an officer, director, employee or stockholder or member of an association or corporation of which any party is a member, subsidiary or affiliate. Any member of the Public Service Commission, and any member of its staff, the Consumer Counsel, and any member of his staff, and staff members of intervenor State agencies, may have access to any Confidential Information made available pursuant to this Order, and shall be bound by the terms of this Order.

- (c) Nondisclosure Agreement. Prior to giving access to Confidential Information as contemplated in paragraph 1(b) above to any counsel or expert, counsel for the party seeking review of the Confidential Information shall deliver a copy of this Order to such person, and prior to disclosure such person and the counsel shall agree in writing to comply with and be bound by this Order. In connection therewith, Confidential Information shall not be disclosed to any person who has not signed a nondisclosure agreement in the form which is attached hereto and incorporated herein as Exhibit "A." Court reporters shall also sign an Exhibit "A." The nondisclosure agreement (Exhibit "A") shall require the persons to whom disclosure is to be made to read a copy of this Protective Order and to certify in writing that they have reviewed the same and have consented to be bound by its terms. The agreement shall contain the signatory's full name, permanent address and employer, and the name of the party with whom the signatory is associated. Such agreement shall be delivered to counsel for the Company and a copy delivered to the Commission.
- (d) Delivery of Documentation. Where feasible, Confidential Information will be marked as such and delivered to counsel. In the alternative, the Confidential Information may be made available for inspection and be reviewed by counsel and experts as defined in paragraph 1 herein in a place and a time mutually agreed on by the parties, or as directed by the Public Service Commission.

Challenge to Confidentiality. (a) This Order establishes a procedure for the expeditious handling of information that a party claims is confidential; it shall not be construed as an agreement or ruling on the confidentiality of any such document.

- (b) In the event that the parties hereto are unable to agree that certain documents, data, information, studies or other matters constitute trade secret, confidential or privileged commercial and financial information, the party objecting to the trade secret claim shall forthwith submit the said matters to the Commission for its review pursuant to this Order. When the Commission rules on the question of whether

any documents, data, information, studies or other matters submitted to them for review and determination are Confidential Information, the Commission will enter an order resolving the issue.

- (c) Any party at any time upon ten (10) days prior notice may seek by appropriate pleading to have documents that have been designated as Confidential Information or which were accepted into the sealed record in accordance with this Order removed from the protective requirements of this Order or from the sealed record and placed in the public record. If the confidential or proprietary nature of this information is challenged, resolution of the issue shall be made by a hearing examiner and/or the Commission after proceedings in camera, which shall be conducted under circumstances such that only those persons duly authorized hereunder to have access to such confidential matter shall be present. The record of such in camera hearings shall be marked "CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. 90.6.39." It shall be transcribed only upon agreement by the parties or Order of the Hearing Examiner or the Commission, and in that event shall be separately bound, segregated, sealed, and withheld from inspection by any person not bound by the terms of this Order, unless and until released from the restrictions of this Order either through agreement of the parties, or after notice to the parties and hearing, pursuant to an Order of the Hearing Examiner or the Commission. In the event that the Hearing Examiner or the Commission should rule in response to such a pleading that any information should be removed from the protective requirements of this Order or from the protection of the sealed record, the parties, at the request of the providing party and to enable the providing party to seek a stay or other relief, shall not disclose such information or use it in the public record for five (5) business days.
- (a) Receipt into Evidence. Provision is hereby made for receipt of evidence in this proceeding under seal. At least ten (10) days prior to the use of or substantive reference to any Confidential Information as evidence, the party intending to use such Information shall make that intention known to the providing party. The requesting party and the providing party shall make a good faith effort to reach an agreement so the information can be used in a manner which will not reveal its trade secret, confidential or proprietary nature. If such efforts fail, the providing party shall separately identify, within five (5) business days, which portions, if any, of the documents to be offered or referenced on the record containing Confidential Information shall be placed in the sealed record. Only one (1) copy of documents designated by the providing party to be placed in the sealed record shall be made and

only for that purpose. Otherwise, parties shall make only general references to Confidential Information in these proceedings.

- (b) Seal. While in the custody of the Commission, materials subject to this Order shall be marked "CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. 90.6.39," and due to their trade secret nature, they shall not be considered as records in the possession or retained by the Commission within the meaning of the open meetings or public records statutes.
- (c) In camera Hearing. Any Confidential Information which must be orally disclosed to be placed in the sealed record in this proceeding shall be offered in an in camera hearing, attending only be persons authorized to have access to the Information under this Order. Similarly, cross-examination on or making substantive reference to Confidential Information as well as that portion of the record containing references thereto shall be marked and treated as provided herein.
- (d) Appeal. Sealed portions of the record in this proceeding may be forwarded to any court of competent jurisdiction on appeal in accordance with applicable rules and regulations, but under seal as designated herein for the information and use of the Court.
- (e) Return. Unless otherwise ordered, Confidential Information, including transcripts of any depositions to which a claim of confidentiality is made, shall remain under seal, shall continue to be subject to the protective requirements of this Order, and shall be returned to counsel for the Company within 30 days after final settlement or conclusion of this matter including administrative or judicial review thereof.

Use in Pleadings, Briefs, etc. Where reference to Confidential Information in the sealed record is required in pleadings, cross-examination, briefs, argument or motions, it shall be by citation of title or exhibit number or by some other nonconfidential description. Any further use of or substantive references to Confidential Information shall be placed in a separate section of the pleading or brief and submitted to the Hearing Examiner or the Commission under seal. This sealed section shall be served only on counsel of record (one copy each), who have signed an Exhibit "A." All the protections afforded in this Order apply to materials prepared and distributed under this paragraph.

- (a) Use in Decisions and Orders. The Commission will attempt to refer to Confidential Information in only a general or conclusionary form and will avoid reproduction in any decision of Confidential Information to the greatest possible extent. If it is necessary for a determination in this proceeding to discuss Confidential Information other than in a a general or conclusionary form, it shall be placed in a separate section of the Order or Decision under seal. This sealed section shall be served only on counsel of record (one copy each) who have signed

an Exhibit "A." Counsel for other parties shall receive the cover sheet to the sealed portion and may review the sealed portion on file with the Commission once they have signed an Exhibit "A."

- (b) Summary for Record. If deemed necessary by the Commission, the Company shall prepare a written summary of the Confidential Information referred to in the Decision or Order to be placed on the public record.

Segregation of Files. All Confidential Information filed with the Commission will be sealed by the Commission, segregated in the files of the Commission, and withheld from inspection by any person not bound by the terms of this Order, unless such Confidential Information is released from the restrictions of this Order either through agreement of the parties or, after notice to the parties and hearing, pursuant to the Order of the Commission and/or final order of a Court having jurisdiction. All written Confidential Information coming into the possession of the Consumer Counsel under this order may be retained by him in his office files, but shall be withheld from inspection by others, except for his staff and his counsel, unless released by the Public Service Commission and/or a final order of a court under this paragraph 6 and subject always to the terms of paragraph 7 of this Order.

Preservation of Confidentiality. All persons who may be entitled to receive, or who are afforded access to any Confidential Information by reason of this Order shall neither use nor disclose the Confidential Information for purposes of business or competition, or any other purpose other than the purposes of preparation for and conduct of this proceeding, and then solely as contemplated herein, and shall take reasonable precautions to keep the Confidential Information secure and in accordance with the purposes and intent of this Order.

Reservation of Rights. The parties hereto affected by the terms of this Protective Order further retain the right to question, challenge, and object to the admissibility of any and all data, information, studies and other matters furnished under the terms of this Protective Order in response to interrogatories, requests for information or cross-examination on the grounds of relevancy or materiality.

This Order shall in no way constitute any waiver of the rights of any party herein to contest any assertion or finding of trade secret, confidentiality or privilege, and to appeal any such determination of the Commission or such assertion by a party.

9. Amendment or Modification. The Commission retains jurisdiction of this matter and may alter or amend the provisions hereof as it deems appropriate, upon motion by an appropriate party and reasonable notice.

DONE AND DATED this 22nd day of October, 1990 by a vote of 4-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

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HOWARD L. ELLIS, Chairman

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DANNY OBERG, Vice Chairman

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JOHN B. DRISCOLL, Commissioner

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REX MANUEL, Commissioner

ATTEST:

Ann Peck  
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.

EXHIBIT "A"

I have reviewed the Protective Order in Docket No. 90.6.39, and agree to be bound by the terms and conditions of such order.

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Name

\_\_\_\_\_  
Residence Address

\_\_\_\_\_  
Employer or Firm

\_\_\_\_\_  
Business Address

\_\_\_\_\_  
Party

\_\_\_\_\_  
Date